

Montana State Senate

EXHIBIT 9
DATE 4/19/11
SB 423

SENATOR JIM PETERSON
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Michael W. Cotter, Esq.
United States Attorney
District of Montana
901 Front Street
Helena, MT 59601

Re: Therapeutic Marijuana Legislative Proposals

April 18, 2011

Dear Mr. Cotter:

We are writing on behalf of the Montana Legislature to request guidance and clarification of the U.S. Department of Justice's views of states' medical marijuana regulatory and licensing programs. The Free Conference Committee on Senate Bill No. 423, Senator Jeffrey V. Essmann, Chair, is currently finalizing legislation regulating the use of marijuana and marijuana-infused products for therapeutic use in Montana.

The proposal currently being considered by the Montana Legislature would create a program of registered cardholders (Montana residents with a debilitating medical condition) and registered providers (who may grow and manufacture marijuana for a very limited number of registered cardholders). The Department of Public Health and Human Services (DPHHS) would be responsible for the registration function established by SB 423. Under Montana's current Medical Marijuana Act, DPHHS performs comparable regulatory functions. The proposal would either prohibit compensation for providers or allow for only minimal compensation. At this time, the proposal does not provide for licensed dispensaries or growers.

The Committee received a copy of a letter dated April 14, 2011, from Jenny A. Durkan, United States Attorney for the Western District of Washington, and Michael C. Ormsby, United States Attorney for the Eastern District of Washington, to the Honorable Christine Gregoire, Governor of the State of Washington, concerning legislation currently being considered by the Washington State Legislature related to state regulation of medical marijuana. A copy of the letter is attached.

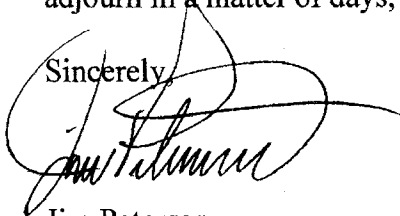
The letter suggests that the Department's investigative and prosecutorial resources will be directed toward persons and organizations that participate in unlawful manufacturing and distribution activities involving marijuana rather than towards seriously ill individuals who use medical marijuana in compliance with state law. However, the letter cites the Justice

Department's intent to vigorously pursue criminal or civil actions for any Controlled Substances Act (CSA) violations, including criminal prosecutions, civil injunctions, and forfeiture of drug proceeds against both those who set up marijuana growing facilities and dispensaries in violation of federal law and those who facilitate the actions of the licensees, including property owners, landlords, and financiers. The letter also specifically states that "state employees who conducted activities mandated by the Washington legislative proposals would not be immune from liability under the CSA".

We appreciate the Department's responsibility and obligation to enforce CSA violations. We ask you for guidance and clarification as to how a state might permissibly proceed to regulate the use of marijuana for a small population of seriously ill individuals. The letter raises several questions regarding enforcement of federal law as it applies to seriously ill individuals who use marijuana for therapeutic purposes. The Free Conference Committee members are hoping that you can provide further clarification of the statements in the letter. They would appreciate clarification of questions such as what provisions in state law might offer relief from fear of prosecution to those who rely on therapeutic marijuana. Would state employees, performing a duly authorized state regulatory function, be subject to criminal prosecution under CSA? Would the Department seek civil injunctions or forfeiture actions against state employees? Obviously the statement that state employees may be subject to liability for performing a regulatory function is cause for concern and creates a level of uncertainty as the Legislature attempt to craft legislation to regulate the therapeutic use of marijuana.

Any light you can shed on the gray areas as to what might be permissible under a state's regulatory program would be most appreciated. Because the 2011 Legislature is scheduled to adjourn in a matter of days, a reply by April 19, 2011, would be also be appreciated.

Sincerely,



Jim Peterson,
President of the Senate,
Sixty-Second Legislature, 2011



Mike Milburn,
Speaker of the House of Representatives
Sixty-Second Legislature, 2011

Enc.